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HUMAN RIGHTS COMMITTEE

Sixtieth session

SUMMARY RECORD OF THE 1600th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 22 July 1997, at 3 p.m.

Chairman: Mr. BHAGWATI

later: Mrs. MEDINA QUIROGA
Mrs. CHANET

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GE.97-17478 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (item 4 of the agenda) (continued)

Third periodic report of France (CCPR/C/76/Add.7, HRI/CORE/1/Add.17/Rev.1, CCPR/C/60/Q/FRA/3) (continued)

1. At the invitation of the Chairman, the members of the French delegation took places at the Committee table.

2. The CHAIRMAN invited members of the Committee who had not already done so to put their questions orally to the delegation in regard to section II of the list of issues (CCPR/C/60/Q/FRA/3).

3. Mr. KLEIN said it was his understanding that the Act of 10 July 1991 covering telephone tapping had had effects contrary to those intended, in that cases of illegal tapping now appeared to be more numerous than cases that were in conformity with the law. There had reportedly been 16,000 instances of legal phone tapping in 1996, as against 100,000 illegal ones. Could the French delegation confirm those figures and, in the event, explain how such a situation was compatible with the Covenant?

4. In regard to implementation of article 27 of the Covenant, he fully endorsed the comments made by Mr. Yalden and Mr. Türk at the previous meeting, and would merely draw the attention of the French delegation to the fact that there had always been States which, after having denied the existence of minorities on their territory, had subsequently recognized it. Assuming that the existence of minorities would one day be recognized in France, would article 27 of the Covenant be applicable?

5. Concerning the implementation of recommendations by international human rights bodies, he was not unaware of the difficulties encountered by States in that respect. However, they could easily be overcome by amending or repealing the relevant provisions of national legislation. The fact that domestic law did not provide for a procedure to give direct effect to such recommendations did not absolve the State from its international obligations, and he recommended that France, as well as other States, should take measures to establish such a procedure.

6. Mr. SCHEININ thanked the French delegation for its explanations concerning the principles underlying the position of the French Government on implementation of article 27 of the Covenant; those explanations would certainly contribute to the quality of its dialogue with the Committee. Following the concerns expressed by Mr. Klein, Mr. Yalden and Mr. Türk, he had only one comment to add: just as article 27 of the Covenant did not have the effect of preventing other categories of the population from enjoying the rights enshrined in it, so the risk that a minority might be refused those rights by virtue of the very fact that it was a minority justified having a separate provision in the Covenant. In addition, there was a need to take measures to guarantee equality of rights for all members of minorities. He noted that the European Convention on Human Rights and Fundamental Freedoms contained no provision comparable to article 27 of the Covenant. To ensure

that both the majority group and minorities enjoyed the rights provided for under article 27 of the Covenant, the Convention relied on various provisions concerning freedom of expression, freedom of religion, etc. He would like to know how the statement made by France was to be interpreted with respect to article 27 of the Covenant. Did France consider that other provisions of the Covenant (notably articles 17, 18 and 19) were sufficient to ensure that everyone enjoyed the rights provided for under that article on equal terms? He would be grateful if the French delegation could clarify those points.

7. Mr. ANDO, after rereading the text of the statements made by France in regard to articles 19, 21, 22 and 27 of the Covenant (document CCPR/C/2/Rev.4), pointed out that although the Covenant and the European Convention on Human Rights and Fundamental Freedoms were in many respects comparable, the Committee could nevertheless interpret the Covenant on the basis of different criteria from those of the European Commission on Human Rights - and had indeed already done so. It should also be noted that national legislation could not abolish facts that were universally recognized. In regard to article 27 of the Covenant, it should be borne in mind that the authors of the Universal Declaration of Human Rights, adopted in 1948, had started from the assumption that if equality of treatment were granted to everyone without distinction, the objective of international protection of human rights would be achieved; however, half a century of experience had proved that the rights of minorities required special attention. That explained in part why provisions devoted expressly to those rights had been introduced in the Covenant (art. 27), which in fact did not appear in other international instruments. In the light of those considerations, he would like to know whether the French authorities intended to review their position in regard to implementation of article 27 of the Covenant.

8. Concerning the referendum in New Caledonia, he pointed out that because of the high rate of immigration and the large number of residents of European descent natives of the territory were now in a minority, and some of them feared that a referendum would tend to strengthen the position of the majority group. That being so, he wondered whether it was appropriate to decide the future of the territory on the basis of the results of a referendum, and would like to have the French delegation's views on that point.

9. On the question of equal rights for men and women, paragraph 50 (a) of the report stated that the wife, like the husband, could henceforth manage and dispose of common property on her own, although certain important acts could be carried out only by mutual agreement of both spouses. What were those "important acts"? In addition, he noted from paragraph 56 of the report that the wife could use the name of her ex-husband if authorized to do so. What was the relevant procedure in the matter? Lastly, paragraph 66 stated that women's access to enlistment in some corps could be limited by decree of the Minister responsible for the armed forces. Could the French delegation cite examples and provide details of those decrees?

10. Concerning the right to freedom of expression, the Act of 29 July 1881 on freedom of the press referred to in paragraph 302 of the report was apparently still in force. However, in view of the fact that it dated from the last century, and in view of the fact that other highly developed means of communication, universally or almost universally accessible, now existed, he

wondered whether the Act was not now obsolete. Did the authorities plan to amend or repeal it? Lastly, the legislation mentioned in paragraph 308 of the report appeared questionable, in that it subjected freedom of expression to unnecessary restrictions. In addition, it would be interesting to know how many prosecutions had been brought under such legislation.

11. Mrs. EVATT thanked the French delegation for its replies, but noted that some aspects raised by members of the Committee had not been dealt with.

12. The French delegation had stated that women were finding difficulty in reconciling their family life with their professional life. That being so, did the law prohibit discrimination in respect of family responsibilities, whether in the public service or in the private sector? What protection was enjoyed by working women who were obliged, for example, to be absent from the workplace to take care of a sick child or to settle other family problems?

13. Concerning implementation of articles 26 and 27 of the Covenant, she associated herself with other members of the Committee who had expressed views on the matter, and noted that the French delegation had stated that all persons should be free to choose their religion, their culture, their language etc. without being subjected to pressures by a group seeking to impose its own values. In that connection, she had been surprised to learn that French women residing in Mayotte retained their personal status, as laid down by Islam, especially since that status could be discriminatory. In the light of those statements by the French delegation, was a person free to choose his or her status, without, for instance, being subject to the principle of equal rights enshrined in national legislation? She thanked the French delegation in advance for its replies to those questions, which it was asked to forward to the Committee in writing before the concluding observations on consideration of the report were drafted.

14. Mrs. MEDINA QUIROGA congratulated the French authorities on the progress achieved in realizing equality between men and women and hence in realizing full implementation of article 3 of the Covenant. That being so, she found it difficult to understand why the law still contained several discriminatory provisions, as shown by paragraphs 340 and 373 of the report concerning implementation of the second paragraphs of articles 23 and 24 of the Covenant. The provisions mentioned in paragraph 56 of the report appeared to be discriminatory against men, and should accordingly be deleted. Lastly, she associated herself with the question raised by Mrs. Evatt concerning implementation of article 3 of the Covenant in the territorial unit of Mayotte.

15. With regard to article 19 of the Covenant, paragraph 301 of the report stated that the law reserved the severest punishment for defamation of constituent bodies. She cited the example of her own country, Chile, where members of such a body could suffer defamation, but not the body itself. Was the same true in France? Could the French delegation also give examples of case law which would clarify the distinction made between offences against individuals and offences against a constituent body? In that connection, she pointed out that international human rights law generally showed a greater tolerance towards criticism directed against a constituent body. What was the situation in France in that respect?

16. She would also like clarification as to the compatibility of the legislation referred to in paragraph 308 of the report with article 19 of the Covenant, and in particular with the provisions contained in paragraph 2 of that article.

17. Concerning article 21 of the Covenant, how did the French State interpret in its jurisprudence the provisions of the Act of 1881 referred to in paragraph 321 of the report whereby "any speech contrary to public order and morals" was prohibited?

18. In regard to article 24 of the Covenant, she noted that the concept of the "adulterine" illegitimate child did not seem to be in conformity with the Covenant, and would like to know why children so defined were victims of discrimination in regard to rights of succession.

19. Lastly, she associated herself with the concerns expressed by Mrs. Evatt and by Mr. Yalden, Mr. Türk and Mr. Klein concerning article 27 of the Covenant, and would be grateful if the French delegation could send written responses to the Committee to all questions still unanswered before the Committee's concluding observations were drafted.

20. Lord COLVILLE said he appreciated the detailed replies given by the French delegation. He, too, hoped that it would provide more information in writing as soon as possible.

21. Concerning the implementation of the Committee's findings in regard to communications addressed to it under the Optional Protocol, he endorsed the comments made by Mr. Klein and pointed out that, in the event of contradiction between the Committee's recommendations and domestic law, the State party should take the necessary legislative measures to enable those recommendations to be implemented.

22. Returning to a question which related more to section I of the list of issues (CCPR/C/60/Q/FRA/3), namely the case of the boy from the former Yugoslavia who had been killed at a road block set up by the French police, he pointed out that according to the latest information received, the boy had been in the boot of the car at the time he was killed. In such circumstances, the police officer could not properly claim that he had fired in self-defence. He understood that the French authorities would not wish to express an opinion on the substance of the case, in view of the fact that an appeal was currently before the court. However, he would like some clarification on the facts relating to the appeal. It would appear that the case had been dismissed, and that application to the courts had been made by a third party seeking to have that decision quashed. If his information was correct, the matter was extremely serious, since a case of impunity might be involved. He thanked the French delegation in advance for providing information on the subject.

23. Mrs. Medina Quiroga took the Chair.

24. Mr. PRADO VALLEJO associated himself with the questions raised by Mrs. Medina Quiroga concerning paragraph 301 of the report. In addition, he would like to know what was to be understood by "constituent bodies" in France. In his country, Ecuador, legislation on defamation and insult applied

only when the offence involved an individual, and not an institution. What was the situation in France in that regard? He would also like to know what was meant by the term "public authorities", since he had noted that the law also provided for severer penalties in cases of defamation and insult against public officials. If the term covered members of the police and the gendarmerie, it could be concluded that a citizen who criticized any member of those forces would find himself punished more severely than if he had defamed or insulted a private individual, which did not seem to be in compliance with the provisions of the Covenant. Lastly, under the same Act, restrictions were imposed on press freedom which appeared excessive. In particular, what was to be understood by the expression "domestic public order" which seemed very difficult to define? He would like to hear the views of the French delegation on those points.

25. Mrs. GAITAN DE POMBO welcomed the very full information provided by the French delegation, but said she was still concerned about certain specific aspects, in particular those raised by Mrs. Medina Quiroga. Like other members of the Committee, she hoped that the French delegation would provide supplementary information in writing as soon as possible.

26. Concerning the National Consultative Commission on Human Rights, she pointed out that her country, Colombia, like many others, had followed with great interest the development of that body, whose history, purpose and membership were described in paragraphs 101 to 112 of the core document on France (HRI/CORE/1/Add.17/Rev.1). On reading those paragraphs she had noted that the Commission, which had initially been purely consultative, had in 1993 become an independent body whose purpose was to assist the Prime Minister in all national and international matters relating to human rights. The Commission served the dual purpose of monitoring and proposing, both upstream of government action, when bills and policies were formulated, and downstream, checking to ensure that human rights had been respected in administrative practice or in preventive measures. She would like to have details as to exactly what the "monitoring" function involved. Speaking generally, she assured the French delegation that an institution such as the National Consultative Commission on Human Rights was of great importance for bodies all over the world, whether governmental or non-governmental, which were concerned with human rights, and she would encourage the French Government to give further support to the Commission's dual role.

27. Mr. Bhagwati took the Chair.

28. The CHAIRMAN invited the French delegation to reply to additional questions which had been put orally by members of the Committee under section II of the list of issues (CCPR/C/60/Q/FRA/3).

29. Mr. FAUGERE (France), replying to a question on "new religions" and the right of free association, stated that the law on associations in no way authorized the administrative authorities to block the setting up of an association of any kind. That was also true for associations which supported activities of a religious or purportedly religious nature. On the other hand, if an association was causing a breach of public order and if its purpose was actually illicit, injurious to morality or caused danger to persons, proceedings for dissolution could be brought before a judicial magistrate.

With regard to the Church of Scientology, the national association which supported that church's activities in France had been put into compulsory liquidation following a tax inspection. However, the authorities knew that it had resumed its activities in another form. In any event, the Church of Scientology was in no way entitled to claim the status of a church or religious congregation by virtue - inter alia - of the Act of 9 December 1905 on the separation of church and State, and thus it enjoyed none of the benefits, notably tax benefits, attached to that status. Some of its members in France had been prosecuted and convicted for endangering other persons and for practising medicine illegally. More generally, sects as propagators of beliefs were not subject to prosecution by the authorities, but the latter could make use of all the legal means at their disposal in cases where a sect, or any of its members, was guilty of practices that were illegal or contrary to public order, for instance abduction of minors, unlawful confinement or acts of violence. In any event, it was clear that such procedures applied only to physical persons and not to organizations. In conclusion, he emphasized that the question of sects was a matter of concern both to French public opinion and to the authorities, and that an observation unit had been set up following a parliamentary report. That unit, which had been in operation since 1996, would soon be publishing its first conclusions.

30. In regard to telephone tapping, the explanations given previously applied exclusively to operations carried out legally. Telephone tapping by the authorities was subject to a strict quota, and a ceiling, currently set at 1,540 telephone taps, had been established by decision of the Prime Minister following authorization by the National Commission for the Control of Interceptions. In fact, the actual number of persons whose phones were tapped was always well below that ceiling. Most tapping was carried out as part of investigations into acts of terrorism and organized crime. It was impossible to confirm the figures quoted by Mr. Klein because they concerned cases of illicit phone tapping, which by their very nature were not registered and which were carried out by private agencies. The commercial availability of the necessary equipment had probably contributed to the development of the phenomenon, which the Government was trying to prevent; thus, it had decided in March 1997 to review approval procedures authorizing companies to manufacture, market and operate the technical equipment required. In future, such companies would be subject to authorization by the Prime Minister, in consultation with the National Control Commission.

31. With regard to the powers of the Ministry of the Interior to prevent publications of foreign origin which jeopardized public order from entering France, the measure that applied was in fact an article added to the Act of 29 July 1881. That article, drafted in 1939, could be regarded as outdated in the light of the current development of very powerful means of communication. It nevertheless constituted a useful barrier, since some 60 cases were recorded every year. The main grounds for exclusion were in half the cases the racist or anti-Semitic nature of the publication; the rest of the cases concerned paedophile or heavily pornographic publications, and occasionally brochures on the manufacture of weapons and explosives, which were particularly dangerous at a time when France was experiencing a wave of terrorist attacks. The Government was considering what enforcement measures it could apply in regard to videos, but had not yet taken a decision. The most difficult problem in that area was the development of the Internet, which

would have to be dealt with at international level, even though the possibility of criminal prosecution of on-line messages which constituted an offence were already not to be excluded.

32. On the matter of whether police officers could be subjected to disciplinary proceedings, it should be noted that suspension from duty was possible, and indeed recommended, whenever activities carried out by the officer in question seemed likely to hinder the smooth running of the service.

33. Insults against constituent bodies were covered by the Press Act of 29 July 1881, in which such bodies were expressly defined. It was true that insults against constituent bodies mostly concerned the national police force. When the insults or defamatory statements were directed against the police force as such, the Minister of the Interior would normally be entitled to approach the Minister of Justice to request protection for the force against such attacks.

34. Lastly, he said he could not comment on the account given of the dramatic events that had occurred in 1995 when certain Yugoslav nationals had crossed the Franco-Italian border, because the facts of the case were still sub judice. However, it should be emphasized that the appeal by the civil parties concerned was currently being reviewed by the Court of Criminal Appeal.

35. Mrs. MORIZE-RABAUX (France) said she would reply to questions that had been raised concerning the overseas departments and territories. The first question had concerned the personal status of persons who did not have civil status under ordinary law; article 75 of the Constitution expressly provided that they could retain their personal status for as long as they did not renounce it. All that was needed to renounce that personal status was to make a statement before the civil registry officer on attaining the age of majority, and the transition to the regime of ordinary law was irreversible.

36. Concerning the definition of the electorate for the purposes of the 1998 vote in New Caledonia, it should be understood that the law governing referendums provided that only those whose names were entered on the electoral rolls of the territory on the date the consultation was held, and who had been domiciled there since 6 November 1988, would be eligible to vote. Persons who had previously been domiciled in the territory and who subsequently did their national service or followed courses of study outside the territory were deemed to have been domiciled there during that time. Responsibility for compiling the 1998 electoral role had been entrusted to administrative commissions, chaired by a judicial magistrate who had the casting vote. The administrative commission carried out a review of the electoral rolls, and decided on cases where it had noted that electors whose names appeared on the roll did not meet the requirements for domicile. A first mission had visited the territory from 22 March to 8 April 1997, had examined the electoral rolls, and had ordered investigations into the situation of certain electors; a second mission was planned for September 1997, and the magistrates would be compiling the final version of the rolls and the tables annexed to them in the second half of July 1998 after taking into account any appeals made.

37. Mrs. de CALAN (France) said she would reply to questions raised on the subject of equality between men and women. Figures for women employed in managerial posts in the civil service were set out in a report issued every two years by the Ministry for the Civil Service. That report showed that women accounted for 40 per cent of managerial posts in the civil service generally, but that the proportion in major Government departments (the Council of State, the Court of Audit, and the Tax Inspectorate) had been only 15.7 per cent in 1993, a low figure which nevertheless represented a doubling in 10 years (from some 7 per cent in 1982). No notable progress was apparent in regard to very high positions, where appointments were by decision of the Government, for which the figures were low, with only 4.8 per cent of women occupying the post of director of department, 10.7 per cent that of rector of an academic institution, and 4.3 per cent that of ambassador; for prefects, the figure had risen in 10 years from zero to 2.6 per cent.

38. The Committee had asked for specific examples of decrees governing the enlistment of women in the armed forces. There had been women auxiliaries in the army since 1944. Women had been admitted to the Ecole Polytechnique since 1970, and had had access to the Ecole Militaire since 1983 and to the college of officers of the national gendarmerie since 1984, and they would before long be able to enlist in the air force. The Act of 1972 governing the status of members of the armed forces carried that trend further, and established equality both in regard to statutory guarantees and in regard to career prospects. However, that equality before the law was based on a quota system whereby an annual recruitment rate was set for entrance examinations to training establishments. Since 1976, the number of women admitted to training courses for technical administrative officers in maritime affairs had been restricted to 30 per cent of the total, and it had been restricted to 10 per cent of the total in the case of seagoing personnel. In the air force, the flying officer corps was restricted to men, but the officer corps for mechanics and ground staff admitted 20 per cent of women. In the gendarmerie, the rate was now 7.5 per cent for each annual recruitment.

39. In the field of civil law, one member of the Committee had asked whether it was possible for a divorced woman to keep the name of her former spouse. That was made possible by a simple mention in the divorce ruling. The difference between the minimum marriageable age - 15 years for girls and 18 years for boys - was explained by objective considerations, puberty being earlier in the case of girls, but also by practical considerations. Clearly, a young man under 18 years of age would not be able to support a family. In any event, there were provisions enabling the legal age limit for marriage to be lowered. One member of the Committee had expressed an interest in what means women had available to reconcile family life and professional life. There was an act governing professional equality in the public sector which included provisions designed to ensure greater equality between men and women; thus, parental leave was available to both parents, as well as the right to work part-time, even though in the overwhelming majority of cases it was women who availed themselves of that right. In that field, there was a need not only for legal measures, but also for changes in attitude; some very interesting surveys among young people showed that perceptions of the relations between men and women in couples were changing. Her delegation would be pleased to send the results of that survey to the Committee.

40. Mr. LAGEZE (France) said he would provide some additional information, firstly regarding the defamation of constituent bodies. The Act of 29 July 1881 was not directed against offences of opinion, but against statements which were manifestly ill-intentioned and had the effect of discrediting a corporation as a whole. That Act, though it might seem old, had given rise to a century of case law, and was still well-suited to the contemporary situation.

41. A divorced wife was given the option of retaining her husband's name if she could give proper grounds for having an interest in so doing and if her spouse gave his consent. The simplest example was the case of a woman practising a profession who was known by her husband's name. Lastly, a member of the Committee had raised the question of why rights of succession were restricted for adulterine children. That was only the case if those rights were in competition with those of legitimate children, since the purpose of the law was to protect the legitimate family.

42. Mr. PERRIN de BRICHANBAUT (France) said that in regard to article 27 of the Covenant, and the interpretative declaration made by France in that connection (document CCPR/C/2/Rev.4), he was perfectly aware that France's position might appear to run counter to a current philosophical trend.

43. The political philosophy underlying the pre-eminence accorded in French public law to equality between citizens without distinction and to the unity of the French people was fundamental to French identity. That was a conviction shared by all political movements without distinction. The French authorities were strongly bound by the Constitution on that point, and the Constitutional Council regularly reminded them of the scope and content of its provisions; that meant in effect that they were not free to alter their attitude in that respect.

44. However, it did not follow that the socio-economic needs of persons belonging to particular groups were not properly taken into account. On the contrary, a policy for facilitating the integration of such persons into the national community and for protecting them from discrimination was being actively pursued. It might be dangerous to confuse a recognition of minority status with increasing the rights of individuals. Equality between citizens was affirmed by a universal and general constitutional provision, and the French authorities believed that the rights of individuals were at least as well protected by universal provisions as they would be by specific ones. The interests of each individual were fully taken into consideration, and in certain fields, such as that of naturalization, they were certainly better guaranteed than in other countries where the concept of a minority was recognized in public law. An active policy was being pursued, and specifically targeted action taken to promote respect for national languages and traditions, particularly in the overseas territories. His delegation would be glad to send the Committee a detailed table showing how the various linguistic traditions were being respected by the Ministry of National Education in the overseas territories. Several members of the Committee had urged his Government to reflect on the general observation concerning article 27 of the Covenant (No. 23) to see how a new synthesis of the different legal traditions could be arrived at, and he could assure them that that would be done.

45. Further to the information already given on certain points, he said that statistics relating to the Gayssot Act were identical for convictions and for complaints, and that all complaints brought had originated in an action brought under public law. It might seem surprising that a text as old as the 1881 Press Act should be kept as a reference. In fact, that text was retained because it was constantly being updated. Thus, the provisions of the Gayssot Act, although much more recent, had been incorporated into the Act of July 1881.

46. The Consultative Commission on Human Rights worked actively and with determination, and above all in complete independence. It asked the various Government departments questions which were often embarrassing, to which replies were given, in an effort to find solutions which would allow progress to be made in the relevant legislation. It had a real influence, which had increased steadily over the years, and it also had an important role to play vis-à-vis non-governmental organizations, encouraging them to make their claims and views more consistent, so that their suggestions were more coherent than would otherwise be the case.

47. A certain number of questions had remained unanswered, and those would be dealt with by written replies, giving statistics and examples, notably in relation to anti-terrorist case-law.

48. The Committee might note that the new French Prime Minister had recently stated that the Government intended to reconsider carefully those international instruments to which France was not a party, which showed a strong determination to continue to promote human rights.

49. The CHAIRMAN thanked the French delegation for the information it had given, and invited members of the Committee to make any oral concluding observations, on the understanding that they would also be able to participate in the drafting of the written concluding observations.

50. Mr. LALLAH warmly welcomed the detailed replies given by the French delegation as a whole. He had expressed some reservations on the report, which he had considered over-theoretical, but the replies had amply compensated for that shortcoming. He had been pleased to learn that a reform of the law was underway, but would have liked the report to have made some mention of that reform. It was still his view that aliens in France suffered from many forms of discrimination, and he hoped that, as the delegation had stated, efforts would be made to eradicate that discrimination. He had noted, in regard to the laws specifically applicable to Mayotte, that France had not entered any reservation in regard to article 3 of the Covenant, a consideration which should be taken into account. He had been puzzled by the attitude of the French Government in regard to article 27 of the Covenant, and was glad to know that it was to give consideration to the Committee's general observation on the subject, an observation which had been well received in other quarters, contained nothing revolutionary, and was totally in keeping with the Covenant.

51. Mr. KRETZMER reminded the delegation of the questions he had raised under section I of the list of issues, which in his view had not received satisfactory replies. First, regarding the difference between the

instructions issued to the police and those issued to the gendarmerie regarding the use of force and when to open fire, he had not been convinced by the explanations given, to the effect that the police intervened chiefly in urban areas and the gendarmerie in rural areas. Inhabitants of rural areas were no less entitled to security of person than those of urban areas.

52. While it was true that investigations into the actions of which the police were accused raised complex problems, the delegation's replies had not allayed his concern. The prosecutor had considerable discretionary powers to decide whether or not to institute proceedings, without it being clear whether that decision was open to supervision, and once proceedings had been started, a great deal of time elapsed before witnesses were interrogated. In any event, that was what had happened in the sad case of the adolescent boy from the former Yugoslavia who had been killed two years earlier in the south of France, since two years after the incident the persons who had been part of the same convoy had still not been called to give evidence, although they had been actually present at the scene. The final stage of inquiry was still carried out by an investigating body which was part of the police force: how much credence could be given to an internal inquiry conducted by the police themselves? It was essential that an independent outside body, with no links with the police, should be responsible for investigating allegations of violence made against the latter.

53. In his view he had not received a clear reply to the question as to whether police officers accused of having used their weapons without proper justification would be subject to suspension. The reply had been that it depended on circumstances. As he saw it, suspension should be the rule until the investigation had been concluded.

54. In regard to contumacious judgements, he was not convinced in the light of the reply he had received that the Covenant was being fully implemented. If the person tried in absentia appeared before the court prior to the sentence being pronounced, there would be a retrial in the person's presence. He presumed that if the person appeared afterwards, he or she would not automatically have the right to a retrial, which could pose a problem in regard to the Covenant.

55. Mr. ANDO said he would like to comment on the replies given to two questions he had raised earlier. First, on the subject of equality of the sexes, the delegation's replies showed that France had made great progress towards realizing such equality, but that much remained to be done. He hoped that the next report would give evidence of further progress. The second question had concerned minorities. In that connection, the differences of view between the members of the Committee and the delegation related more to the approach to the question than to the goals to be achieved. He would mention only the referendum in New Caledonia; in his view, if there was to be lasting peace in the region, change should come from the local population itself and not from outside. For that, it was essential that the indigenous population should be aware of the human rights to which they were entitled, and he had no doubt that the French authorities would continue their efforts in that regard.

56. Mr. SCHEININ said he wished to refer first to brutalities committed by the police, including some instances of untimely use of firearms, a question which gave rise to particular concern insofar as a structural problem concerning the remedies open to victims tended to create a situation which gave every appearance of impunity. That was partly due to the regulations applicable to the various services responsible for maintaining public order, which were outdated, above all where the gendarmerie were concerned.

57. He would also like to mention a phenomenon which had grown into a real European syndrome, namely the fact that many people were being refused the right to leave a country, because they were prevented from obtaining a travel ticket and thus from entering the territory of another country where they might apply for asylum. The State was in fact discharging its responsibility onto airlines and shipping companies, in what amounted to a violation of rights pertaining to certain persons.

58. In addition, France did not deal in its report with the question of the disciplinary regime of the military in relation to implementation of articles 9 and 14 of the Covenant, probably due to the existence of reservations on those two articles (CCPR/C/2/Rev.4, p. 25, para. 3). Since France's next report was due shortly, he proposed that it include in that report an account of how it was complying with articles 9 and 14 of the Covenant and with other provisions of international norms in force in regard to the disciplinary regime applied in the armed forces.

59. Lastly, with regard to article 27, he associated himself with the comments already made concerning the fruitful dialogue with the delegation on the subject of ethnic minorities. The information provided by the delegation and by the report did not suggest that France had done as much as it could in that respect. There were situations in which the cultural, religious and linguistic rights of ethnic minorities were not being given the attention they deserved, either in metropolitan France or in the overseas departments and territories. However, the French authorities were clearly aware of that situation, and it was to be hoped that they would look into the question in future.

60. Mr. PRADO VALLEJO said that following a positive dialogue with the French delegation, which had provided many satisfactory replies, he would like to emphasize four points. Firstly, there should be speedier investigations into alleged cases of ill-treatment by the police, since there had been numerous complaints about the excessive delays suffered by such investigations. Secondly, the amnesty law adopted in respect of New Caledonia for the incidents which had occurred in 1988 constituted an unfortunate precedent and a violation of the Covenant, because it conferred impunity. Any amnesty law which suspended remedies and prevented the opening of inquiries into incidents constituting a violation of the Covenant contravened the latter. Thirdly, the Act governing national security, which established judicial procedures different from the ordinary procedures, could give rise to discrimination, and the explanations given did not dispel all doubts as to the scope of its application. Fourthly, the Act governing press freedom had the effect of restricting the rights set out in article 19 of the Covenant, insofar as it gave special protection to constituent bodies (CCPR/C/76/Add.7, para. 301), whereas Article 19 defined individual rights.

61. Mrs. MEDINA QUIROGA said she was still concerned about implementation of articles 7, 9 and 14, but she would await the French delegation's written replies before taking a position, and hoped that her concerns would be reflected in the Committee's concluding observations. For the present, she would confine herself to raising the problem of equality between men and women in marriage. In the light of the tremendous progress made by France in eliminating discrimination against women, she had been astonished at the reasons given to explain the difference in the minimum ages for marriage for men and women, namely 18 and 15 years respectively. Since men reached maturity before they were 18, the only real reason for the difference had to be economic: the man had to be 18 years of age to marry, because he was the breadwinner, whereas a young woman of 15 years of age could quite well stop studying and stay at home to raise children. That conception of the role of women amounted to a denial of the whole of France's policy for the elimination of discrimination against women. In that connection, she associated herself with the questions raised regarding the fact that France had not formulated reservations in respect of article 3 of the Covenant.

62. She did not really see why the State should decide the place where a child's birth had to be registered. Lastly, she pointed out that a State which penalized the adulterine child was not protecting the family; if anyone had to be punished, it should be the adulterous man or woman. The provision amounted to discrimination against the child (CCPR/C/76/Add.7, para. 379).

63. Mr. BUERGENTHAL welcomed the fact that the Committee would be including the conclusions arising out of its dialogue with the State party in writing its concluding observations, since positive as well as negative aspects would be included. There were indeed many positive elements in the way that France protected human rights. He would draw attention in particular to the decision by the Council of State on the question of treaties in general and on the priority accorded them, as well as to the fact that courts generally were paying increasing regard to human rights. In addition, the considerable number of naturalizations referred to by the French delegation was worthy of note.

64. However, he pointed out that he had not received a reply to his question regarding the distinction drawn between persons who were French by birth and persons who were naturalized, which raised serious issues in regard to article 26 of the Covenant. In fact, the French Government had power to deprive a naturalized citizen of his nationality if he had committed certain crimes or offences, even if they were unrelated to the acquisition of nationality. He hoped that the authorities would ensure that equal treatment was given to all their nationals, irrespective of how they had acquired French nationality. The second matter which concerned him was pre-trial detention, which seemed virtually automatic (40 per cent of cases), and thus contravened the principle of presumption of innocence. Pre-trial detention was not the only means available of achieving the desired end, and he would like the French authorities to consider other possibilities.

65. Thirdly, he at any rate had not been convinced by the idea that the 20 months' service to which conscientious objectors were liable served as a test of their beliefs. Lastly, he associated himself with the comments made

by other members of the Committee concerning, on the one hand, the rules applicable to the gendarmerie and on the other, implementation of article 27.

66. The CHAIRMAN said that as the dialogue between the Committee and the State party was drawing to a close, he would like to thank the French delegation for the frank and direct way they had replied to the Committee's numerous questions, thus providing a large quantity of information which had enabled it to form a clear picture of the human rights situation in France. The French delegation had performed its task magnificently and with great professionalism. It should be noted that the dialogue between the State party and the Committee was a continuing exercise, whose sole purpose was to improve the situation in the country concerned with respect to human rights. The French delegation had perhaps wondered why members of the Committee were asking so many questions, when their country had always been in the forefront of the struggle to promote and implement human rights and when it had been the source of one of the first, if not the very first, Declarations of the Rights of Man and of the Citizen. No country was perfect in that area, and the questions raised were not intended to criticize a State party or to find fault, but rather to gain a better understanding of the situation and to make proposals for improving it. In that regard, it had to be recognized that members of the Committee had expressed certain concerns which the State party should take into account.

67. He said that he was personally concerned, first, by the situation of asylum seekers, and notably by France's narrow interpretation of the term "persecution" for purposes of granting an asylum seeker refugee status. In his view, France was wrong to require that the asylum seeker prove a threat of persecution by the State or by a State body, discounting threats of persecution from other sources. It might be pointed out that, according to decisions handed down by a Canadian court, a person could obtain refugee status if seeking asylum in order to escape forced sterilization (in China) or excision.

68. His second concern related to the slowness of investigations and prosecutions of law enforcement officials accused of human rights violations, as well as the lack of provision for compensating victims of unlawful arrest or detention, in conformity with paragraph 5 of article 9 of the Covenant.

69. Thirdly, the Committee had had a very interesting debate with the French delegation on how the term "minority" should be understood and on the applicability of article 27 of the Covenant. For his part, he considered that the existence of a minority could only be defined on the basis of objective criteria, and he pointed out that article 27 referred to rights held in common by members of ethnic, religious or linguistic groups to which it applied.

70. In other words, there were still problems which France would have to tackle in the human rights field. Those problems would no doubt be overcome, and it was likely that France would be able to announce full implementation of human rights in its next report, which had been due in February 1997 but had been deferred; the State party would be informed of the date in due course.

71. Mr. PERRIN de BRICHAMBAUT (France) thanked the Chairman and members of the Committee for the attention they had given to the French delegation and

the interest they had shown in its report. His delegation hoped that it too had shared in a wider task, that of promoting human rights in France and throughout the world, in which the Committee played such a decisive role. It hoped to return soon to complete the task begun at the current session.

72. The CHAIRMAN said the Committee had thus concluded its consideration of the third periodic report of France (CCPR/C/76/Add.7).

73. The members of the French delegation withdrew.

The meeting was suspended at 5 p.m. and resumed at 5.15 p.m.

74. Mrs. Chanet took the Chair.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

75. The CHAIRPERSON drew the attention of members of the Committee to a file entitled "Article 40" which contained various documents numbered 1-6 relating to the work of the current session. The first document was a preliminary draft prepared by Mr. Klein for a draft general observation on article 12 (unnumbered document in English only); secondly, the Committee had received comments on its final observations in respect of Colombia (note dated 18 April 1997 from the Government of the Province of Antioquia, unnumbered document in Spanish only) and from Georgia (note dated 6 May 1997 from the Deputy Secretary of the National Security Council for Human Rights Issues in Georgia, unnumbered document in English); the third document contained additional information provided by Germany at the Committee's request, concerning policy and legislation relating to aliens in the Federal Republic of Germany (unnumbered document in English); the fourth document was a letter from Mr. Joinet, Chairman-Rapporteur of the Working Group on the Question of Administration of Justice and Compensation in the framework of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (unnumbered, in French); the fifth document concerned the comparative cost of sessions of the Committee held in Geneva and in New York, and the sixth was a study by Mr. Alston on the functioning of United Nations human rights treaty bodies (E/CN.4/1997/74).

76. The Committee could begin by looking at the first document, namely the text prepared by Mr. Klein to serve as a basis for a general observation by the Committee on article 12 of the Covenant. It was an exhaustive work on the Committee's jurisprudence concerning all aspects of article 12, and was not properly speaking a draft text but simply a compilation of decisions taken by the Committee. Mr. Klein would explain what action he would like the Committee to take based on the text he had prepared, and what kind of guidance he would like to receive for the drafting of a further text which could be considered at the session in October 1997.

Draft general observation on article 12 of the Covenant

77. Mr. KLEIN explained that his first task had been to consult the summary records, the reports of States parties, and the concluding observations of the Committee since 1992, as well as the findings adopted following consideration of communications submitted under the Optional Protocol, in order to bring

together the various elements relating to article 12. He could not promise that he would have a first draft general observation to submit to the Committee for the session of October 1997, but a text would be ready in time for the session of spring 1998. He would like to know whether he should take up all the questions raised in the course of the Committee's work on article 12, or select a few specific problems in order to consider them in depth. He would welcome some guidance on the matter, and thought the Committee could formulate a few general ideas on article 12 and its links with the other rights set out in the Covenant, and try to define the extent of the restrictions authorized by that article.

78. The CHAIRPERSON considered that the preliminary draft followed an appropriate format, and was glad to note that Mr. Klein had taken due account of the conclusions the Committee had drawn from its consideration both of the communications and of the reports of States parties.

79. Mr. LALLAH thanked Mr. Klein for having prepared a balanced and complete first draft, which could serve as a useful basis for the work of the Working Group on article 40. He suggested that, in order to make the general observation clearer to outside readers, the text of article 12 of the Covenant should be reproduced in some kind of introductory paragraph which would be easy to refer to. The Committee might perhaps consider doing the same for all its general observations the next time they were issued.

80. Mr. SCHEININ congratulated Mr. Klein on the thorough research he had carried out. On the substance, he believed that where the freedom of everyone to choose his residence was concerned, mention should be made of the difficulties that any restriction of that right could cause in regard to access to social security, accommodation, public services, etc., as well as the risk of gender discrimination that might arise when, for instance, the revenue authorities took account only of the husband's residence.

81. Mr. KLEIN thanked members of the Committee for all their proposals, which he would duly take into account. However, before continuing his work, he would like to know what approach the Committee wished to adopt in formulating its general observation: should it be a general text on all the points the Committee considered important in regard to article 12 of the Covenant, or rather a compilation of the Committee's existing jurisprudence concerning the implementation of that article?

82. Mr. KRETZMER said he strongly believed that the aim of the general observation should be to bring together all the decisions taken by the Committee on the implementation of article 12, as they emerged from consideration of communications and reports by States parties, and that the Committee should avoid drafting any kind of general statement in advance which could prove restrictive for members newly elected to the Committee.

83. Mr. ANDO shared that view. He added that members of the Committee might hold different opinions on the same point, and that the danger of a text of general scope would be that certain members might add a dissenting opinion to a general observation by the Committee, which would be regrettable.

Accordingly, to avoid such a situation, it would be preferable to group together in the general observation the decisions taken by the Committee as a whole, as in fact had been decided earlier.

84. Mrs. MEDINA QUIROGA shared Mr. Kretzmer's opinion in regard to the difficulties that the Committee's general observations presented for new members, since she herself had some difficulties, notably in regard to the general observation on article 3. In addition, she noted that certain important questions, such as that of equality between the sexes, had never been taken into consideration in the general observations. Accordingly, the Committee should avoid confining itself to questions it had already dealt with.

85. Mr. BUERGENTHAL shared the views of Mr. Ando and Mr. Kretzmer. He believed that the Committee should avoid drawing up general observations when its jurisprudence on a given article appeared insufficient.

86. Mrs. EVATT shared the concerns expressed by Mrs. Medina Quiroga. In her view, the chief purpose of the Committee's general observations should be to tell States parties what information the Committee would like them to include in their periodic reports.

87. Mr. KLEIN considered that the main point was that the general observation should be submitted within a conceptual context based on the Committee's jurisprudence, and that was what he would endeavour to do, taking full account of the comments and suggestions made by members of the Committee.

88. The CHAIRPERSON thanked Mr. Klein and invited the Chairman of the Working Group on article 40 to give his views on the note dated 18 April 1997 from the Government of the Colombian province of Antioquia and on the note dated 6 May 1997 from the National Security Council on Human Rights Issues of the Republic of Georgia.

89. Mr. KRETZMER (Chairman of the Working Group on article 40) stated that the note dated 18 April 1997 had been forwarded to the Committee by the Permanent Mission of Colombia to the United Nations Office in Geneva, as part of the reaction of the Government of the Colombian province of Antioquia to paragraph 31 of the Committee's concluding observations on Colombia. In that paragraph, the Committee recommended that consideration be given to bringing back the presidential decree legalizing the setting up of rural security cooperatives. The Government of the province of Antioquia had in fact stated that the existence of such cooperatives was justified by the situation in Colombia in general and in the province in particular. The Working Group's recommendation on the latter was the following: "The Working Group considered the note of the Government of Antioquia submitted under cover of a note by the Permanent Mission of Colombia dated 6 May 1997. The Working Group recommends that a letter be sent by the Chairperson acknowledging receipt of the note and informing the State party that the note is being brought to the attention of Committee members. Receipt of the note and the Chairperson's letter should be mentioned in the annual report. The note should not be reproduced in full."

90. The note sent by Georgia posed more problems, because it had been sent directly to the Committee by the Deputy Secretary of the National Security

Council on Human Rights Issues of the Republic of Georgia, without going through the intermediary of the Mission of the State party to the United Nations Office in Geneva. As a result, the Working Group, not knowing whether the note constituted an official communication from the State party, had made the following recommendation: "The Working Group noted that the document was sent directly to the Committee by the Deputy Secretary of the National Security Council on Human Rights Issues, and not under cover of a note by the Mission. It was therefore not clear whether the document could be regarded as an official statement by the State party. The Working Group recommends that a letter from the Chairperson be sent to the Deputy Secretary, welcoming the letter which informed the Committee about the action taken to implement the concluding observations of the Committee. The annual report should mention that a letter has been received from the Deputy Secretary, informing the Committee about the steps taken to put into effect to the concluding observations and to disseminate them in Georgia."

91. In regard to the additional information sent by Germany, the Working Group's recommendation was the following: "The Working Group noted the document transmitted by the Government of Germany pursuant to a request by members of the Committee during consideration of the report. It recommends that a letter be sent to the State party expressing appreciation for the transmission of the document and that appropriate mention should be made in the annual report in the section dealing with the consideration of reports, as an addendum to the section dealing with Germany."

92. The CHAIRPERSON said it was difficult to deal with the note from Colombia and the note from Georgia in the same way, since the latter had not only been transmitted through official channels, but also did not, strictly speaking, emanate from the Government of the State party. She urged members of the Committee to reflect on that point, and to give their views when the Committee returned to the matter and took a decision regarding the recommendations of the Working Group on article 40.

The meeting rose at 6.10 p.m.